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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3239 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 & 2 YES; 3 to 5 NO

BLUE STAR LTD

Versus

COMMISSISONER OF LABOUR

Appearance:

1. Special Civil Application No. 3239 of 1995
MR KM PATEL for Petitioner No. 1
MR SP HASURKAR AGP for Respondent No. 1
MR RC PATHAK for Respondent No. 3
MR NR SHAHANI for Respondent No. 2
RULE SERVED for Respondent No. 4-5
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CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 04/11/2004

ORAL JUDGEMENT

1. By this petition under Articles 226 and 227 of the Constitution, the petitioner, an employer-company, has prayed to quash the order dated 31.3.1995 of the Commissioner of Labour, the respondent No.1, whereby, 21 contract labours are found and held to be doing the same work as done by the permanent workmen of the petitioner. The occasion to render such decision had arisen on account of the disagreement with regard to the type of work performed by the workmen employed through contractor in the establishment of the petitioner.

2. The brief factual background, as far as it is relevant for the purpose of deciding the main issue, is that the petitioner engaged contract labour and, upon grievances being voiced by the trade union of contract labour, an enquiry into dissimilar conditions of service was ordered to be completed preferably before the end of December, 1994 by order of this Court dated 20.10.1994 in SCA No.9311 of 1994. Accordingly, the Commissioner of Labour completed the enquiry and, by order dated 29.12.1994, held, inter alia, that 26 workmen working under the contractor were performing the same kind of work as was performed by the permanent workmen of the petitioner. The petitioner challenged that order in Special Civil Application No.718 of 1995 which was allowed by order dated 2.2.1995 as under:

"Rule. Mr.N.R.Sahani, learned counsel appears for the respondent No.2 Union and waives service of Rule.

The very short issue which arises in this petition is whether the Labour Commissioner while deciding the dispute under clause (5) of the licence issued under the Contract Labour (Regulation & Abolition) Act, 1970 and Rules framed thereunder, acts quasi-judicially and is required to adhere to the principles of natural justice and if so, whether in the present case, such rules have been breached while passing the impugned order dated 29.12.1994.

Relevant clause of licence reads as under:

"In cases where the workmen employed by the contractor perform the same kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of

service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.

Provided that in the case of any disagreement with regard to the type of work, the same shall be decided by the Labour Court (sic) Commissioner whose decision shall be final."

A bare perusal of the aforesaid clause leaves no room of (sic) doubt that the Labour Commissioner has been conferred adjudicatory authority to resolve any disagreement between employer and employee with regard to the type of work carried out by the workmen employed by the contractor for the purpose of claiming equal wages. Obviously, when authority is conferred with powers to decide dispute between two rival contentions of the disputing parties, he assumes role of a Judge or Adjudicator and if that be so, it needs no arguments that he is under an obligation to observe the principles of natural justice as the situation warrants unless specifically excluded by any statute. It is nobody's case that any statute dispenses with the requirement of adhering to the principles of natural justice by the Labour Commissioner under the aforesaid clause.

About the 2nd question, no difficulty arises inasmuch as there is no dispute that material which the Labour Commissioner collected from the workmen about the nature of duties discharged by them, has not been made available to the petitioner who is party to the dispute and had a right to defend his stand by demonstrating that the material placed before the Commissioner by the workmen does not reveal true position. He also has a right to place material before the Commissioner to establish incorrectness of the claim made by the workmen. Likewise, the workman has right to have access to the material produced by the other side in support of their claim. That having not been done and the Commissioner having acted on the material collected by himself without informing the rival claimants about it has clearly acted in breach of principles of natural justice and the order cannot be sustained on this ground alone.

In view of my aforesaid conclusion, I am
not inclined to examine other issues raised in
this petition.

Petition is allowed. The impugned order
dated 29.12.1994 is set aside and the Labour
Commissioner is directed to decide the points of
disagreement between the parties afresh by
observing the principles of natural justice by
affording adequate opportunity to both parties
which include informing each party before the
Labour Court (sic) about the material which (sic)
sought to be relied upon by the Labour
Commissioner. The matter shall be decided on or
before 31.3.1995. It may be noticed that prior
this also, matter came up before this Court at
the instance of the workmen that the Labour
Commissioner was not proceeding with due dispatch
in the matter of deciding the dispute and this
Court has directed to decide the matter on or
before 31.12.1994.

Rule made absolute. No order as to
costs."

(emphasis added)

2.1 The operative direction in the above order is to
decide the points of disagreement afresh observing the
principles of natural justice by affording adequate
opportunity to both parties which includes informing each
party about the material sought to be relied upon by the
Labour Commissioner. It is the case of the petitioner
that pursuant to the said direction, hearing was fixed on
10.3.1995 and the petitioner had filed its interim reply
and final written statement on 10.3.1995 and 14.3.1995
respectively. On 27.3.1995, the petitioner submitted an
application to give an opportunity to cross-examine the
workmen whose statements were recorded by the officers of
the Department and also prayed for an opportunity to
permit it to lead evidence in support of its case. That
application dated 27.3.1995 was dismissed on the same day
on the grounds that the respondent No.1-authority had, in
the course of his enquiry, obtained statements of the
workmen and they were verified by personal visit on the
spot; copies of such statements were furnished to the
parties, but examination or cross-examination could not
be included in the hearing of a summary nature held by
the Labour Commissioner. It is thereafter that the
impugned elaborate order dated 31.3.1995 was made, in

effect confirming the earlier order dated 29.12.1994.

3. Although the impugned order is challenged on various grounds and the constitutional validity and vires of the relevant provisions of the Contract Labour (Regulation & Abolishment) Act, 1970 and the Rules made thereunder ("the Act" for short) are called into question in the petition, the learned counsel for the petitioner expressly restricted his arguments and attack to the main ground that the impugned order was passed in violation of the principles of natural justice insofar as opportunity to cross-examine the workmen, whose statements were recorded, was not afforded to the petitioner. It was strenuously argued that the right to cross-examine witnesses or persons on whose statements an order was based was an essential part of the principles of natural justice and that opportunity having been denied, the impugned order ought to be quashed as being arbitrary and in violation of the express direction of this Court reproduced hereinabove.

3.1 The learned counsel Mr.K.M.Patel, appearing for the petitioner, relied upon the judgment of the Supreme Court in STATE OF KERALA v. K.T.SHADULI [AIR 1977 SC 1627] wherein the act of the Sales Tax Officer in refusing to summon the witnesses for cross-examination by the assessee was held to constitute infraction of the right conferred on the assessee by an express provision to give reasonable opportunity of being heard to prove the correctness or completeness of return. Elaborating on the meaning of "to prove", it is observed that, it means establishing the correctness or completeness of the return by any mode permissible under law. The usual mode recognized by law for proving fact is by production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine the witnesses examined by the Sales Tax Officer. It is, however, also held in the same judgment that:

"This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights

affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of audi alteram partem requires that a particular specified procedure has to be followed. It may be that in a given case the rule of audi alteram partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on facts and circumstances of each case".

3.2 It was also argued for the petitioner that there were differences in the designation and qualification of the workmen employed by the petitioner and those employed through contractors and such difference could have been brought out only if evidence recorded by the Labour Commissioner were subjected to cross-examination. In support of that submission, Mr. Patel relied upon the judgment of the Supreme Court in STATE OF U.P. v. J.P. CHAURASIA [AIR 1989 SC 19], wherein the observations of an earlier judgment of the Supreme Court in FEDERATION OF ALL INDIA CUSTOMS AND CENTRAL EXCISE STENOGRAPHERS (RECOGNIZED) v. UNION OF INDIA [AIR 1988 SC 1291] are quoted as under:

"There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less-it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before, a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

It is also observed in para 17 of the same judgment as under:

".....The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration."

3.3 The learned counsel also relied upon the following observations of the Supreme Court in para 32 in K.L.TRIPATHI v. STATE BANK OF INDIA [AIR 1984 SC 273]:

"32. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified is in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."

It is also observed in para 41 of the same judgment as under:

"41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules

of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

4. Perusing the impugned order, it was clear that the Labour Commissioner had held the hearing on 10.3.1995, 14.3.1995, 20.3.1995, 24.3.1995 and 30.3.1995 after supplying to the parties all the statements and material relied upon by him. During the course of hearing, written submissions were taken on record and oral submissions were also heard. It is recorded in the impugned order that the application to permit cross-examination of the workmen was already rejected on the grounds that it was a hearing of summary nature and cross-examination of the workmen would bring mental pressure on the workmen. The demand to hold an extensive enquiry in the whole industry in general was also negatived. The parties had expressly completed their written submissions and oral arguments were heard thereafter. Ultimately, on the basis of the statements of workmen and documentary evidence produced by the petitioner and the contractors, it was held in the impugned order that there was no reason to change the earlier order dated 29.12.1994 and 21 workmen who were still in service were held to be performing the same kind of work as the permanent employees of the petitioner. It must be noted here that the earlier order dated 29.12.1994 was made after local and personal visits on 14.12.1994, 15.12.1994 and 24.12.1994 when the parties were personally heard and statements of the workmen concerned were recorded in presence of representatives of all the parties. It was thereafter also recorded that the statements of the workmen were found to be correct on the "on-job verification". It is, therefore, clear that the impugned findings are arrived at after objective examination and subjective verification of facts. A detailed affidavit is filed by the Commissioner of Labour in support of the impugned order wherein it is, inter alia, stated that "Cross-examination of the workers was not allowed as it was feared that mental pressure may be put to them in changing their earlier unbiased statements" and "During the proceedings, no party could provide fresh materials or documents on which earlier order can be changed." In the affidavit of the General Secretary of the Trade Union of workmen, the respondent No.2, it is stated on oath that, within 3 months of the impugned order, "all the 21 beneficiaries of the order"

were removed.

5. There is no dispute about the fact that under the statutorily prescribed conditions and Clause (5) of the Licence issued under the Contract Labour (Regulation and Abolition) Act, 1970, workmen of contractor were entitled to the same conditions of service as applicable to the workmen directly employed by the principal employer if they were performing same or similar kind of work; and that in case of any disagreement with regard to the type of work, the same was required to be decided by the Labour Commissioner whose decision would be final. There is also no dispute about the fact that under the aforementioned order of this Court, the parties were required to be given adequate opportunity of being heard and each party was required to be informed about the material to be relied upon; and no question of cross-examination of the workmen was raised. And it cannot be gainsaid that any difference in designation or qualification between the contract labour and the employees directly employed by the petitioner was wholly irrelevant for the decision since the sole criterion for parity was same or similar kind of work.

5.1 What stands out from the above factual and legal position is that a limited jurisdiction to decide the difference arising out of a factual controversy is conferred upon the Labour Commissioner and observation of principles of natural justice is held to be implied in the process of arriving at the decision. What was envisaged by the earlier order of this Court, quoted hereinabove, was affording of adequate opportunity to both parties which would include informing each party about the material which was sought to be relied upon by the Labour Commissioner. Neither the issue of cross-examination of the workmen was raised nor was a specific direction sought in that regard by the petitioner. The direction to furnish all the statements and material relied upon by the Commissioner was duly complied with and adequate opportunity of hearing was afforded and no grievance is made in that regard. It is the issue of cross-examination which was newly raised and agitated in the present petition.

6. Examining the importance of cross-examination of witnesses in the context of constitutional validity of the National Security Act, the Supreme Court in A.K.ROY v. UNION OF INDIA [AIR 1982 SC 710] observed in para 99 as under:

"99. The importance of the realisation

that the rules of natural justice are not rigid norms of unchanging content, consists in the fact that the ambit of those rules must vary according to the context, and they have to be tailored to suit the nature of the proceeding in relation to which the particular right is claimed as a component of natural justice. Judged by this test, it seems to us difficult to hold that a detenu can claim the right of cross-examination in the proceeding before the Advisory Board. First and foremost, cross-examination of whom? The principle that witnesses must be confronted and offered for cross-examination applies generally to proceedings in which witnesses are examined or documents are adduced in evidence in order to prove a point. Cross-examination then becomes a powerful weapon for showing the untruthfulness of that evidence. In proceedings before the Advisory Board, the question for consideration of the Board is not whether the detenu is guilty of any charge but whether there is sufficient cause for the detention of the person concerned. The detention, it must be remembered, is based not on facts proved either by applying the test of preponderance of probabilities or of reasonable doubt. The detention is based on the subjective satisfaction of the detaining authority that it is necessary to detain a particular person in order to prevent him from acting in a manner prejudicial to certain stated objects. The proceeding of the Advisory Board has therefore to be structured differently from the proceeding of judicial or quasi-judicial tribunals, before which there is a lis to adjudicate upon.....Indeed the disclosure of the identity of the informant may abort the very process of preventive detention because, no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross-examination. It is, therefore, difficult in the very nature of things to give to the detenu the full panoply of rights which an accused is entitled to have in order to disprove the charges against him. That is the importance of the statement that the concept of what is just and reasonable is flexible in its scope and calls for such procedural protections as the particular situation demands. Just as there can be an effective hearing without legal representation

even so, there can be an effective hearing without the right of cross-examination. The nature of the inquiry involved in the proceeding in relation to which these rights are claimed determines whether these rights must be given as components of natural justice."

(emphasis added)

6.1. In *STATE OF JAMMU & KASHMIR v. BAKSHI GULAM MOHAMMAD* [AIR 1967 SC 122], it was argued that the right to hearing included the right to cross-examine the witnesses. That argument was rejected by the Court by observing that the right of cross-examination depends upon the circumstances of each case and must also depend on the statute under which the matter is being enquired into. It was categorically held by the Constitution Bench that: "It was said that the right to the hearing included a right to cross-examine. We are unable to agree that that is so."

6.2 In *AVINASH NAGRA v. NAVODAYA VIDYALAYA SAMITI* [(1997) 2 SCC 534], in the case of termination of service without holding an enquiry against the backdrop of the allegation of molestation of a girl, the question arose whether the girl and her room-mates should be exposed to cross-examination. The Supreme Court took the view that, in the circumstances, it was very hazardous to expose the young girls to tardy process of cross-examination and dispensing with regular enquiry under the rules and denial of cross-examination were held to be legal and not vitiated by violation of the principles of natural justice.

6.3 In *MANAGING DIRECTOR, ECIL, HYDERABAD v. B. KARUNAKAR* [AIR 1994 SC 1074] (in para 6), relying upon the earlier judgment in *A.K.KRAIPAK v. UNION OF INDIA* [AIR 1970 SC 150], it is observed that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. It is also observed that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry

occasions.

7. In the facts of the present case, the nature of quasi-judicial adjudication about facts required collection of material in the form of written and oral evidence without the authority having the power to enforce attendance and order production of documents or the power to examine witnesses on oath. However, the decision to be rendered by the Labour Commissioner, in order not to be arbitrary or a matter of subjective satisfaction, was required to be based on relevant material which could be objectively examined and relied upon. Therefore, in such circumstances, the opportunity to the parties to submit and examine the material and the opportunity of being heard was sufficient compliance of the principles of natural justice. The workmen whose statements were recorded were far from witnesses in a quasi-judicial proceeding. And being dependent upon the contractors and the principal employer for their livelihood, they cannot be expected to give or stick to an independent version of facts if they were to be subjected to cross-examination by their masters. Therefore, the Labour Commissioner was right and perfectly justified in holding that the workmen were likely to be put under mental pressure to change their earlier unbiased statements which were verified by personal inspection on the spot. It is repeatedly held that principles of natural justice are not codified with a view to keep them flexible and the right to cross-examine the witnesses being a part of it cannot be inflexible, particularly when the exercise of that right was likely to defeat the ends of justice. As categorically held by the Supreme Court in A.K.ROY (supra), there can be an effective hearing without the right of cross-examination. In the facts of the present case, the petitioner appears to have been afforded the fullest possible opportunity of being heard and submit the material which might contradict the statements and material staring against it. The petitioner appears to have insisted upon cross-examination of the workmen to contradict and take away the basis of the evidence collected by the Commissioner to arrive at a decision. Therefore, the insistence of the petitioner was not only unfair and unreasonable but mischievous. As the peculiar facts of this case bear out, the workmen concerned have indeed been removed from service within three months of the impugned order and it is not clear whether any workman ever received any benefit under the impugned order.

8. In the facts and for the reasons recorded

hereinabove, it is held that the impugned order dated 31.3.1995 of the Labour Commissioner is legal with the result that it would be incumbent upon the petitioner to ensure, in accordance with the provisions of Section 21 of the Act, that the workmen concerned of the contractor were paid the same wages and benefits as applicable to the workmen directly employed by the petitioner for the same or similar kind of work and, if any amounts are still due, they shall be paid such amounts with running interest at the rate of 9% per annum. With these observations and directions, the petition is rejected and Rule is discharged with costs of Rs.3,000/- to be paid by the petitioner to the respondent No.2-trade union.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)